IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VII, Rule 32(2) (b)

Description of case

Date of decision: 08.06.2006

Criminal Appeal No. 1290 of 2001
(Old No. 1580 of 1990)

A.F.R. (Approved for Reporting)
Not approved for Reporting

Initials of Judges

Date: 08.06.2006

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1290 of 2001
(Old No. 1580 of 1990)

Jai Prakash
S/o Sri Narain Singh
R/o Village Tamlang
Patti Gangwa Syun P.S. Patti Gangwar Syun
Pauri Garhwal. ……..Appellant (In Jail)

Versus

State of Uttaranchal ……. Respondent

Mr. L.K. Tewari, learned counsel for the appellant.
Mr. D.K. Sharma, Government Advocate/Public Prosecutor for the State.

Coram: Hon'ble Rajeev Gupta, C.J,
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (herein after for brevity referred as Cr.P.C.), is directed against the judgment and order dated 26.06.1990, passed in Sessions Trial No. 15 of 1989 by the then learned Sessions Judge, Pauri Garhwal, whereby appellant Jai Prakash has been convicted and sentenced under Section 302 of Indian Penal Code, 1860 (herein after referred as I.P.C.), to imprisonment for life.

2. Prosecution story in brief is that one Smt. Pyari Devi (deceased) used to receive pension of Rs. 900/- per

month as widow of her late husband. She was resident of village Tamlang, Patti Gangwar Syun in the district of Pauri Garhwal. Appellant Jai Prakash, step son of the deceased used to live separately from her in the same house. Smt. Pyari Devi (deceased) used to pay half of said pension to her step son (the appellant) but he wanted more share in the pension. On 23.12.1988, at about 8:00 P.M., appellant quarrelled with his step mother and threw her from the first floor, and consequently due to the injuries received by her, she died. P.W. 1 Kanti Devi wife of Narendra Singh and daughter-in-law of the deceased, was the sole eye-witness of the incident. She shouted for help on which village Pradhan (P.W.3) Bishan Singh and some others reached at the place of incident. Narendra Singh (P.W.2) son of the deceased, who was posted as peon in Kotdwara was given telephonic information of the incident in the very night. The next day i.e. 24.12.1988, P.W. 2 Narendra Singh lodged First Information Report (Exh.A-1) with the Patti Patwari of Gangwar Syun, which was registered by Patwari against the appellant Jai Prakash for alleged offence, punishable under Section 302 of I.P.C., and prepared Check Report (Ext.A-4). (In Uttaranchal hills, certain Revenue Officers are vested with the police powers). Patti Patwari Sudrshan Singh (P.W.6), after making necessary entry in the General Diary (Ext. A-5) regarding First Information Repost being lodged, proceeded for investigation. On 25.12.1988, in the morning, he took the dead body in his possession and prepared the inquest report (Ext. A-2). He further prepared police form No. 13 (Ext. A-7), sketch of the

dead body (ext. A-8) and other necessary papers and sent the dead body for post mortem examination. Dr. G.S. Rawat (P.W. 4), on 26.12.1988, conducted autopsy on the dead body and prepared post mortem examination report (Ext. A-3). Following ante mortem injuries were found on the dead body bye said Medical Officer:-

1. **Lacerated wound on left side forehead 4cm X bone deep. On dissection of scalp, there was depressed fracture of frontal bone beneath the wound in an area of 3 cm X 1.5 cm, haemotoma in an area of 4 cm X 3cm. On the scalp there was sub clural and sub araenoid haemotama beneath the fracture in an area of 4 cm X 2.5cm.**
2. **Abraded contusion on left cheek in an area 2 cm X 1 cm bluish-black.**
3. **Lacerated wound just below the chin 1cm X 1cm X muscle deep.**
4. **Lacerated wound in left supra clavicle fosa 1cm X 2cm X muscle deep.**
5. **Lacerated wound in right supra clavicle fosa 1cm X 2cm X muscle deep.**
6. **Abraded contusion in part in an area of 2cm X 2cm. Bluish black.**

In the opinion of Medical Officer, who conducted the post mortem examination, the cause of death was coma as a result of head injury.

3. After recording the statements of the witnesses and preparing Site Plan (Ext. A-10), the Investigating Officer (P.W. 6) Sudarshan Singh, submitted charge sheet (Ext. A-11) against the appellant in the court. The concerned Magistrate after giving necessary copies to the appellant, as required under Section 207 of Cr.P.C., committed the case to the court of Sessions for trial of the accused. The learned Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 302 I.P.C. against the appellant Jai Prakash that he committed murder of Pyari Devi on 23.12.1988 at about 8:00 P.M. in village Tamlang, Patti Gangwar Syun. The accused/appellant Jai Prakash, pleaded not guilty and claimed to be tried. Where after, prosecution got examined P.W. 1 Kanti Devi- eye-witness, P.W. 2 Narendra Singh- the informant (real son of the deceased), P.W. 3 Bishan Singh, the then village pradhan, P.W. 4 Dr. G.S. Rawat- who conducted the post mortem examination, P.W. 5 Prithwi Pal Singh- neighbour of the deceased, and P.W. 6 Patwari- Sudrashan Singh (Investigation Officer). All oral and documentary evidence was put to the accused Jai Prakash by the trial court, as required under Section 313 of Cr.P.C. in reply to which, he submitted that he has been falsely

implicated in the crime. Learned Sessions Judge, after hearing both the sides, found the accused Jai Prakash guilty of offence punishable under Section 302 of I.P.C.

and accordingly convicted him. And after hearing him on sentence, learned Sessions Judge, sentenced him to imprisonment for life. Aggrieved by said judgment and order dated 26.06.1990, this appeal was filed by the convict before the Allahabad High Court on 17.08.1990. The appeal is received by this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal, from said High Court.

4. We heard learned counsel for the appellant and learned Government Advocate/Public Prosecutor and perused the entire record.

5. P.W. 1 Kanti Devi, the sole eye-witness of the incident has stated on oath, before the trial court that deceased (Pyari Devi) was her mother-in-law. She further states that the deceased was step mother of Jai Prakash (accused). This witness has stated that family of Jai Prakash and that of the deceased lived separately in the same house and their kitchens were separate. This witness is wife of Narendra Singh, real son of the deceased. P.W. 1 Kanti Devi, further states that her mother-in-law used to get pension after death of her husband. On the day of the incident, at about 8:00 P.M., the mother-in-law and daughter-in-law were warming themselves near fire place, when accused Jai Prakash entered in their room and started quarreling with his step mother. This witness further narrates that in a fit of

anger, accused Jai Prakash lifted Pyari Devi and took her out and threw her from first floor on the floor of the courtyard. Consequently, Pyari Devi received head

injuries due to fall and died. P.W. 1 Kanti Devi, lastly states that she shouted for help and it was raining at the time when incident took place. After the incident, the witness says that she got information sent to her husband at Kotdwara. It is also stated by P.W. 1 Kanti Devi that the reason of quarrel was that Jai Prakash wanted more share in the pension, which was being received by his step mother (deceased).

6. P.W. 2 Narendra Singh (son of the deceased) is the informant who lodged First Information Report (Ext. A-1) on the next day of the incident with Patti Patwari Gangwar Syun. This witness is step brother of the accused/appellant Jai Prakash. P.W. 2 Narendra Singh states that on the day of the incident, he was in service at Kotdwara. He further states that his mother used to get pension amounting to Rs. 900/- per month out of which she used to pay Rs. 400/- per month to Jai Prakash for expenses of his family. However, he wanted that whole of the pension should be paid to him. The witness states that as soon as he got telephonic information of the incident at Kotdwara, he rushed to his village. Considering the explanation in lodging the First Information Report given by P.W. 2 Narendra Singh, it cannot be said that delay in lodging the First Information Report is without any sufficient reason. P.W. 3 Bishan Singh was village Pradhan of village Tamlag, who has corroborated the prosecution story to the extent that on

23.12.1988, Pyari Devi died and he was witness of the inquest report (Ext. A-2) P.W. 5 Prithwi Pal Singh is neighbour of the deceased, who reached at the spot soon

after the incident. He states that on 23.12.1988, at about 8:15 P.M. when he reached at the spot, he found Pyari Devi lying on the courtyard and P.W. 1 Kanti Devi was shouting at Jai Prakash that he has killed her mother-in-law. This witness further corroborates that at the time of the incident, it was raining outside. The narration of the prosecution story given by the witnesses is trust worthy and reliable and their presence at the place of the incident is natural. P.W. 1 Kanti Devi had no enmity with the appellant.

7. P.W. 4 Dr. G.S. Rawat, who conducted post mortem examination on the dead body on 26.12.1988, has stated that he found as many as six ante mortem injuries (quoted above) and prepared the post mortem examination report (Ext. A-3). The head injury, which is injury No. 1 i.e. lacerated wound on the left side of the forehead in an area of 4cm X 1cm X bone deep, corroborates the prosecution story that the death of the deceased was possible on being thrown from the first floor on the courtyard. The Medical Officer has opined that cause of the death was Coma as a result of head injury.

8. On behalf of the defence, it is argued that there was no light disclosed by the prosecution in which the appellant was seen committing the crime. This Court is conscious of the fact that appellant was not an outsider but a person loving in the same house in the

neighbourhood of the deceased. Witness Kanti Devi (P.W. 1), the appellant and the deceased were related and

known to each other. In such circumstances, when the step son was quarrelling with his step mother even if no light is disclosed by the prosecution, there cannot be any difficulty in recognizing the persons who is quarrelling and throwing his step mother from first floor on the floor of the court yard. It is also contended on behalf of the appellant that according to the prosecution story, after having meals, the mother-in-law and daughter-in-law were warming themselves near the place of fire when accused came and quarreled with the deceased. It is further contended in this regard that from the post mortem report it is not corroborated if deceased have had her meals. In our opinion, the contention has a little force for the reason that in column 7 of the post mortem report, it is clearly mentioned that semi-digested food material was found present in the small intestine. It is matter of common knowledge that in hills generally during winters, people take food in the villages soon after the sunset.

9. Shri L.K. Tewari, learned counsel for the appellant drew attention of this Court to the principle of law laid down in ***Ghapoo Yadav and others V State of M.P. AIR 2003 Supreme Court 1620*** and argued that in a case of sudden quarrel in which there is no pre-meditation, mere act of causing death does not amount to murder as it comes under Exception 4 of Section 300 of I.P.C., which

is punishable under Section 304 of I.P.C. We have examined the facts and circumstances of this case in the light of the aforesaid case law. It is true that the appellant was not armed with any weapon, which

indicates that he had no intention to commit culpable homicide amounting to murder. From the facts narrated by P.W. 1 Kanti Devi, it appears that step mother and step son quarreled and in a fit of anger the step son (appellant-jai Prakash) lifted his step mother (deceased) and threw her from the first floor on the floor of the courtyard. This fact indicates that though the accused had no intention to kill his step mother but he had knowledge that the act which was being done by him was so dangerous that in all probability it could have cased the death of her step mother. That being so, the act on the part of the appellant, in our view is covered under Exception 4 of Section 300 of I.P.C. and the appellant has committed offence of culpable homicide not amounting to murder. Therefore, we are in agreement with the submission of the learned counsel for the appellant that it is only the offence punishable under Section 304 (Part II) of I.P.C., which is proved on the record against the appellant and not the offence punishable under Section 302 of I.P.C.

10. For the reasons as discussed above, this appeal deserves to be allowed partly and the impugned judgment and order is liable to be modified. The conviction of the appellant under Section 302 of I.P.C. is set aside. Instead, he is convicted under Section 304 (Part II) of I.P.C. and sentenced to five years rigorous

imprisonment. Accordingly, the impugned judgment and order stands modified. The appellant is in jail since March, 2006, as he surrendered in pursuance to the non-bailable warrant, issued by this Court. He shall serve out

the sentence passed by this Court and the period undergone by the appellant during trial or during the appeal, shall be adjusted against the period of imprisonment awarded by this Court. The bail application No. 557 of 2006, moved by the appellant on 30.03.2006, has been rendered infructuous and stands disposed of accordingly with this appeal.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt: 08.06.2006
Sweta